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A Comparison Chart:
Oral Arguments Before The North Carolina Court of Appeals, The Supreme Court of North Carolina, and The United States Court of Appeals for the Fourth Circuit

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The Committee appreciates the advice and comments of those who use the comparison chart. Please send your suggestions to the Appellate Rules Committee, NC Bar Association, P.O. Box 3688, Cary NC 27519 or to govaffairs@ncbar.org.

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Statement of Purpose

The North Carolina Bar Association's Appellate Rules Committee prepared this comparison chart to assist North Carolina practitioners in preparing for oral arguments. This chart is intended to provide an abbreviated reference guide for counsel already familiar generally with oral arguments before the various courts. The chart sets forth some key similarities and differences between oral arguments before the three appellate courts in which North Carolina practitioners most often appear. For more detailed information for each court, please consult:

- The State or Federal Rules of Appellate Procedure, including the Fourth Circuit's Local Rule 34
- The "Guides for Counsel" for cases orally argued before the North Carolina Court of Appeals and the Supreme Court of North Carolina, and
- the Fourth Circuit's Procedure Guides on Pre-argument Review and Calendaring and Oral Argument, and
- The Fourth Circuit's Courtroom Protocol for Counsel.

Also, be advised that in some instances, the Comparison Chart contains information and recommendations based on the opinions and experiences of the various Committee members, rather than any formal rule or policy of the appellate courts.

	NC Court of Appeals	***Supreme Court of North Carolina***	***Fourth Circuit***
Where Is The Courthouse Located? **Please read the oral argument notice carefully. The courts may occasionally hold oral argument in different buildings (or even different cities).*	One West Morgan Street Downtown Raleigh * (Looking south down Fayetteville Street and away from the State Capitol, the Court of Appeals is located on the right-hand side of Fayetteville Street) Court of Appeals Clerk's Office: (919) 831-3600.	Two East Morgan Street Downtown Raleigh* (Looking south down Fayetteville Street and away from the State Capitol, the Supreme Court Building is located on the left-hand side of Fayetteville Street) Supreme Court Clerk's Office: (919) 831-5700	1000 East Main Street Downtown Richmond * Entrances are on Bank Street and Main Street (Bank Street entrance is next to room for oral argument registration). Fourth Circuit Clerk's Office: (804) 916-2700

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
When Does the Court *Typically Hold Oral Arguments?** ***Because oral arguments are occasionally held at different location, check all notifications carefully**	The Court of Appeals holds oral arguments year-round except from early June to approximately mid-August. Morning sessions generally begin at 9:30 a.m. and afternoon sessions generally begin at 1:00 p.m.	The Supreme Court usually holds oral arguments from January to May and September to December. Argument sessions at the Supreme Court usually begin at 9:30 a.m.	The Fourth Circuit holds six regular weekly oral argument sessions in Richmond per year, generally Tuesday through Friday, but sometimes Tuesday through Thursday. The Fourth Circuit also occasionally adds additional oral argument dates to its regular calendar or sits at law schools throughout the circuit. Arguments usually begin at either 9:30 (most days), 8:30 a.m. (last day of the session), or 9:00 a.m. (*en banc* arguments). Oral argument session calendars can be located on the Fourth Circuit's website.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
How Will I Know Whether My Case Has Been Selected For Oral Argument?	The Clerk of the Court will email a Court Calendar/Rule 30(f) notice. Read the notice carefully, as it may state that you are to appear for oral argument, or it may state that your case will be "heard" or "decided" on a specified date, but you should not appear for oral argument.	The Supreme Court of North Carolina generally hears oral argument in all cases either selected for discretionary review or appealed as of right.	If your case is selected for oral argument, you will first receive a "Case Tentatively Calendared For Oral Argument" notice stating the session during which argument may be heard. If you have a scheduling conflict with any or all of the days during that session, file a Notice Regarding Conflict With Proposed Argument Dates within seven days. If two or more of your cases are noticed for oral argument during the same session, inform the Clerk when you return your scheduling conflict form if you prefer to have your cases heard on the same day, on consecutive days, or with a break in-between. You can also call a case manager for one of the cases to make sure your request is clear. The Clerk's office will attempt to accommodate your request. If your case is *not* selected for oral argument, you will receive a Rule 34 pre-argument review notice stating that the case has been referred to the panel for disposition without oral argument. Sometimes the opinion will issue a few days after the Rule 34 notice.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
How Far In Advance Will I Generally Know When I Will Have To Appear For Oral Argument?	Approximately 21 to 30 days.	Approximately 30 days, and sometimes less.	Generally, at least six weeks in advance *of a date certain*. However, counsel generally has an idea regarding what week oral argument will occur at least two months in advance. At least two months before oral argument, the Fourth Circuit will issue a "Case Tentatively Calendared For Oral Argument" notice. The notice will state the court session during which the Court tentatively plans to hold oral argument in your case, without a specific day. Counsel then will have seven days to notify the Clerk's office of any scheduling conflicts before the Court selects a final oral argument date.
How Many Judges Will Be On My Panel/the Court?	3 *En banc*-the full court or "a majority of the then sitting judges on the Court of Appeals." *See* N.C. Gen. Stat. § 7A-16	7	*Panel*- 3 *En banc*-All active, non-senior Fourth Circuit judges. The Fourth Circuit is authorized to have 15 active judges, and currently all seats are full. Check the Fourth Circuit's website for a current list of active judges. Also, if a senior Fourth Circuit judge was on your initial three-judge panel, that judge will also participate in the *en banc* court proceedings.
Will I Know The Identity Of My Panel Before Oral Argument Day?	Yes, the panel's identity is disclosed upon notification that oral argument will be held in your case. However, last minute substitutions of panel members are possible.	Yes. The entire court sits for oral argument, unless a justice recuses.	The identity of the panel is not disclosed until the morning of argument. Bulletinboards located near each entrance list the judges on eachpanel for that day. Also, do not be surprised if your panel has a visiting judge from a federal district court or another federal circuit.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
Do I Have To Inform The Court Prior To Oral Argument Who Will Be Arguing The Case?	No.	Yes. Counsel must send the clerk a letter acknowledging receipt of the oral argument notification and stating who will be orally arguing the case.	Yes. After the final oral argument date is selected, Counsel must return an "Oral Argument Acknowledgement Form." That form requires the name(s) of arguing counsel, how many minutes for each counsel's principal argument, and how many minutes for any rebuttal argument.
Any Special Advance Requirements To Orally Argue My Case?	Counsel must have *personally* signed the brief. The brief can be signed at the Clerk's office the day of, but prior to, the oral argument. However, a brief electronically filed is considered personally signed.	Counsel must have *personally* signed the brief. The brief can be signed at the Clerk's office the day of, but prior to, the oral argument. However, a brief electronically filed is considered personally signed.	Counsel must be admitted to practice before the Fourth Circuit and have returned the Oral Argument Acknowledgement Form informing the court who will be arguing the case.
What Must I Bring To Gain Entry To The Courthouse?	A government-issued photo identification is required for entry into the courthouse.	A government-issued photo identification is required for entry into the courthouse.	A government-issued photo identification is required for entry into the courthouse.
In Addition To Potential Weapons (*Including Pocketknives And Pepper Spray*), What Items Am I Prohibited From Bringing Into The Courthouse?	No beverages or food. No cameras, unless preapproved by the Chief Judge.	No beverages or food. No cameras or tape recorders, unless preapproved by the Chief Justice. Umbrellas left at the security desk.	Cameras, tape recorders, food, and beverages may not be brought into the courthouse. Coffee and tea are available in a conference room on the fourth floor (Room 413). Food and beverages are not allowed elsewhere in the courthouse. Cell phones, smart phones, tablets, Blackberrys, pagers, laptops, notebooks, netbooks, or similar functioning devices must be turned off when in a courtroom, unless being used by counsel, in silent mode. Devices must not be used to take photographs or for audio or video recording. Umbrellas must be left at the entrance to the building.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
What Is The Check-In Procedure The Morning Of Oral Argument?	Arrive in the courtroom before oral argument begins. There is a library adjacent to the rear courtroom door that attorneys can use to collect themselves both before and after the argument.	Arrive in the courtroom before oral argument begins. There is a connected attorneys' room through the back of the courtroom that attorneys can use to collect themselves both before and after the argument.	Counsel must register for oral argument in Room 222 (near the Bank Street entrance) in the Richmond courthouse between 8:45 and 9:00 a.m. for arguments beginning at 9:30 a.m. and between 7:45 and 8:00 a.m. for arguments beginning at 8:30 a.m. (generally on the last day of the Court session). Multiple counsel arguing *on the same* side should check in togetherand confirm the order in which they will argue and how the allotted time will be divided among them.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
In How Many Courtrooms Are Oral Arguments Held At Any Given Time?	There is one courtroom at the Court of Appeals, which is located on the 3rd floor. However, the Court of Appeals occasionally holds special oral argument sessions in courtrooms in other counties, as well as in North Carolina's law schools.	There is one courtroom at the Supreme Court, which is located on the 3rd floor.	The Court generally uses five courtrooms located on the 2nd, 3rd, and 4th floors of the courthouse. Four of the courtrooms are named for the color of their carpeting: Blue and Gold on the third floor; Tweed and Red on the fourth floor. The *en banc* courtroom on the second floor was named the "Green" courtroom for years, due to its carpeting, but now is the "Butzner" courtroom in honor of the late Fourth Circuit Judge John D. Butzner, Jr. It is also used for arguments to panels. The second floor also has the Tan courtroom, which is not being used as often since the third floor courtrooms became available (they previously were District Court courtrooms). The final schedule for a session (available on the Court's website under "Oral Argument") shows which courtroom your argument will be in and the order of the arguments (panels typically hear four oral arguments per day). This schedule will not reveal the identity of the panel. On the morning of the argument, reconfirm the order and location of your argument online or on the bulletin boards located near the entrancesof the courthouse Changes, particularly to the order of arguments, can occur at the last minute.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
How Much Time Is Allotted For Oral Argument Per Side?	Generally, 30 minutes per side (all parties to a side must share the time allotted for oral argument)	30 minutes per side (all parties to a side must share the time allotted for oral argument)	*Most Cases*–Each side is allotted 20 minutes (all parties to a side must share the time allotted for oral argument). *Social Security disability cases, Black Lung cases, and labor cases* in which the primary issue is whether the agency's decision is supported by substantial evidence–Each side is allotted 15 minutes. *Criminal Cases* where the primary issue is the application of sentencing guidelines–Each side is allotted 15 minutes. *En Banc*–Each side is allotted 30 minutes
Can Parties On The Same Side Represented By Different Counsel Split Oral Argument Time?	Yes	Yes	Yes, but disfavored. Local Rule 34(d) recommends that no more than two attorneys argue per side.
At Which Counsel Table Do I Sit During Oral Argument?	When facing the bench, appellant's counsel sits at the right-hand table and appellee's counsel sits at the left-hand table. Counsel for the first case should be seated at counsel table when court convenes. After any midday or midmorning break, counsel for the next case should already be seated at counsel table when the court returns.	When facing the bench, appellant's counsel sits at the right-hand table and appellee's counsel sits at the left-hand table. Counsel for the first case should be seated at counsel table when court convenes. After any midday or midmorning break, counsel for the next case should already be seated at counsel table when the court returns.	Attorneys may sit at either counsel table, and counsel for the first case should be seated at counsel table when court convenes. After any midmorning recess, counsel for the next case should already be seated at counsel table when the panel returns. Many panels take a short recess after the second of the morning's four arguments.

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Can I Use My Laptop at Counsel Table?	Yes, as long as the sound is turned off. The Court of Appeals has the capacity to make PowerPoint and "ELMO" presentations.	Yes, as long as the sound is turned off.	No. You may bring a laptop into the courthouse, but it must be turned off while in the courtroom.
What Size Papers Will Fit On The Oral Argument Podium?	Legal size papers (if in the Raleigh courtroom).	Legal size papers, but space is limited on the lectern. The lights and microphone may interfere with placement of an opened notebook or other items on the lectern.	Podiums *normally* accommodate legal size papers.
When Can I Approach The Podium And When May I Begin My Argument?	After the judges have entered the courtroom and been announced, the attorney who is arguing first may approach the podium but should not speak until the presiding judge calls the case.	After the justices have entered the courtroom and been announced, the attorney who is arguing first may approach the lectern when the Chief Justice calls the case.	Appellant's counsel should be seated and ready to go, but should not approach the podium until the presiding judge calls his case. Also, counsel for the next case should not proceed to counsel table until after the panel concludes its greeting of prior arguing counsel and begins its return to the bench. The Court will wait for counsel to be seated for the next argument before it calls the next case.
How Do I Start My Oral Argument?	"May it please the Court."	"May it please the Court."	"May it please the Court."
How Do I Address The Members Of The Panel or Court?	Judge "X" or Your Honor * if on your panel, Chief Judge "X" Tip: The bench has name plates before each judge's seat.	Justice "X" or Your Honor * Justice sitting in the center seat is Chief Justice "X" Tip: A Supreme Court seating chart with biographies and photos is located here.	"Judge 'X'" or "Your Honor" *if on your panel, "Chief Judge 'X'" Tip: The bench has name plates before each judge's seat.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
As The Appellant, Should I First Summarize The Facts for the Court?	The Court of Appeals encourages counsel to provide only a *very brief* summary of facts and only to the extent necessary to facilitate the Court's understanding of the issues.	The Supreme Court usually leaves the decision up to counsel, but counsel should keep the summary brief.	Local Rule 34(d) notes that "members of the Court hearing oral argument will have read the briefs before the hearing and therefore will be familiar with the case." Therefore, counsel for the appellant ordinarily should not recite the facts of the case at the beginning of the argument.
If I Am The Appellant, How Do I Reserve Oral Argument Time For Rebuttal?	Counsel should tell the senior panel judge at the beginning of oral argument how much time he/she wishes to reserve for rebuttal. Although the practice can vary by panel, there is no formal limit to the amount of time reserved for rebuttal. However, most judges prefer the parties not request more than 10 minutes for rebuttal. If appellant exceeds his/her opening argument time, then his/her rebuttal time will be reduced accordingly. Time designated for opening argument but not used can sometimes be added to the reserved rebuttal time if permitted by the Court.	Counsel should tell the Chief Justice at the beginning of oral argument how much time he/she wishes to reserve for rebuttal. If appellant exceeds his/her opening argument time, then his/her rebuttal time will be reduced accordingly.	The Oral Argument Acknowledgment form contains a blank for the amount of rebuttal time requested and allows appellants (and cross-appellants) to reserve up to one-third of their total time for rebuttal. When registering on the morning of oral argument, counsel will be asked to confirm their requests and can change theamount if desired. There is no need for counsel to tell the presiding judge in court how much time they have reserved for rebuttal, because the judges will have that information. Time designated for opening argument but not used in the opening is not be added to the reserved rebuttal time.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
How Will I Know How Much Time I Have Remaining During Oral Argument	A timer on the lectern will start at 30:00 and alert counsel to the total time remaining, including any rebuttal time. Appellant's counsel must keep track of when counsel is into rebuttal time. When five minutes of total argument time remain, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney's oral argument time has ended.	A timer on the lectern will start at 30:00 and alert counsel to the total time remaining, including any rebuttal time. Appellant's counsel must keep track of when counsel is into rebuttal time. When five minutes of total argument time remain, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney's oral argument time has ended.	The oral argument podiums have a three-light (green, yellow, and red) and digital timing system that counsel can use to monitor their argument times. The green light comes on when oral argument begins, and a digital clock counts down the argument time remaining. When 5 minutes of argument time remain on the timer, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney's argument time has ended. At the beginning of appellant's argument, the digital clock reflects a deduction of any rebuttal time reserved by the appellant. For example, if appellant's counsel has 20 minutes of total oral argument time and reserves 5 minutes of that time for rebuttal, the digital timer will start at 15 minutes for appellant's initial argument and the yellow light will come on 10 minutes into the argument. During rebuttal time, the digital clock will start with appellant's reserved rebuttal time. In our example, the rebuttal timer would start at 5 minutes, and because the appellant started with 5 minutes or less of time, the yellow light would come on when the rebuttal began.

	NC Court of Appeals	*Supreme Court of North Carolina*	*Fourth Circuit*
What Cases And Other Authorities Can I Cite And Discuss During Oral Argument?	Only cases or authorities cited in one of the parties or amicus' briefs or in a Rule 28(g) memorandum of additional authority. Counsel should endeavor to submit, and insure that opposing counsel actually receives, any memorandum of additional authority prior to the day of oral argument.	Only cases or authorities cited in one of the parties or amicus' briefs or in a Rule 28(g) memorandum of additional authority. Counsel should endeavor to submit, and insure that opposing counsel actually receives, any memorandum of additional authority prior to the day of oral argument.	No explicit restrictions in the court's rules. However, if pertinent and significant authorities are discovered after submission of the briefs, as a courtesy to both the Court and opposing counsel, counsel should submit a Rule 28(j) letter of supplemental authorities prior to oral argument.
What Do I Do When Oral Argument Has Concluded?	Either quietly exit the courtroom *through the rear side door* or return to the public seating benches. There is a library adjacent to the rear courtroom door that attorneys can use to collect themselves both before and after oral argument.	Either quietly exit the courtroom *through the rear door* or return to the public seating benches. There is a connected attorney room at the back of the courtroom that attorneys can use to collect themselves both before and after oral argument.	Wait for the Fourth Circuit judges to come down from the bench to greet counsel and shake their hands, a tradition unique to the Fourth Circuit. Then while judges are returning to the bench, eitherquietly exit the courtroom or return to the public benches behind the oral argument bar.

"I used to say that, as Solicitor General, I made three arguments of every case. First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented--interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night."

Resolutions in Memoriam: Mr. Justice Jackson, 99 L. Ed. 1311, 1318 (1955).